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HALSEY *v.* FULTON et al.

Sept. 11, 1916.

[89 S. E. 912.]

1. Deeds (§ 133 (3)*)—Estates Created—Vested Remainders.—A trust deed for the benefit of grantor's wife for life and then to their children creates a vested remainder in those of the class then living, although others may be born into it, or those then taking may predecease the wife.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 368, 369; Dec. Dig. § 133 (3).* 11 Va.-W. Va. Enc. Dig. 822.]

2. Deeds (§ 93*)—Construction According to Intent.—In deeds, as in wills, the intention of the makers, to be determined in each case by the language employed in the instrument, unless unlawful, must prevail.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 231, 232; Dec. Dig. § 93.* 4 Va.-W. Va. Enc. Dig. 419.]

3. Deeds (§ 95*)—Construction—Technical Words.—Terms having a fixed and definite technical import must be accorded their technical meaning; but the rule does not apply when, in the same deed, qualifying expressions appear which plainly indicate an intention to give such terms a different signification.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 238, 241-254; Dec. Dig. § 95.* 4 Va.-W. Va. Enc. Dig. 421.]

4. Deeds—(§ 133 (2)*)—Construction—Vested Remainders.—Where the language of the instrument is such as to create a doubt whether a vested or a contingent estate was intended, the courts favor a construction which will establish a vested rather than a contingent interest, and will adopt such a construction if they can do so without straining the meaning of words to accomplish that result.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 371; Dec. Dig. § 133 (2).* 11 Va.-W. Va. Enc. Dig. 822.]

5. Deeds (§ 105*)—Construction—Vested Remainders.—An expressed consideration of natural love and affection for the grantees in a deed should be construed, if the context warrants, to apply to a definite class of persons for whom the grantor would naturally cherish a real affection, rather than to a more or less uncertain, unknown, and remote class.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 278-291, 372-374; Dec. Dig. § 105.* 11 Va.-W. Va. Enc. Dig. 824.]

6. Deeds—§ 133 (1)*)—Construction—Vested Remainders—"Heirs of Body Begotten by Grantor."—Trust deed for benefit of grantor's wife during her life, and then to the "heirs of her body begotten by"

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the grantor, means, by such phrase, "children," and creates a vested remainder in children living at the time thereof.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 368-370; Dec. Dig. § 133 (1).* 11 Va.-W. Va. Enc. Dig. 824.]

7. Deeds (§ 128*)—Construction—Vested Remainders—Rule in Shelley's Case—"Heirs of Body Begotten by Grantor."—Code 1904, § 2423, providing that the words "heirs," "heirs of the body," or "issue," or words of like import, shall be regarded as of purchase and not of limitation, does not apply to a limitation to "heirs of her body begotten by" the grantor of a trust deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 413-415, 419-421, 427; Dec. Dig. § 128.* 12 Va.-W. Va. Enc. Dig. 302.]

Appeal from Circuit Court, Grayson County.

Bill by Neal Halsey, executor, against J. K. Fulton and others. Decree dismissing the bill, and complainant appeals. Reversed and remanded.

H. A. Cox, of Independence, *S. B. Campbell*, of Wytheville, and *J. D. Perkins*, of Marion, for appellant.

Peters & Lavinder, of Bristol, and *W. B. Keglev*, of Wytheville, for appellees.

GOING'S ADM'X *v.* NORFOLK & W. RY. CO.

Sept. 11, 1916.

[89 S. E. 914.]

1. Master and Servant (§ 270 (16)*)—Action for Death—Evidence—Speed.—In an action for the death of plaintiff's intestate, a fireman in the employment of defendant, struck by a passing train while standing between his engine and another track, where plaintiff's evidence showed the speed of the train to be from 25 to 30 miles an hour, evidence as to the time it made the distance from the last stopping place, offered to raise the presumption that it was going 45 miles an hour when deceased was killed, which was a permissible speed at that place, was inadmissible.

[Ed. Note.—For other cases, see Master and Servant Cent. Dig. § 926; Dec. Dig. § 270 (16).* 9 Va.-W. Va. Enc. Dig. 724.]

2. Master and Servant (§ 270 (16)*)—Action for Death—Evidence—Railroads Rules.—Where there was no evidence that the rules of the defendant railroad as to signals, duties of engineers, firemen, etc., were violated, such rules were immaterial and inadmissible.

[Ed. Note.—For other cases, see Master and Servant Cent. Dig. § 926; Dec. Dig. § 270 (16).* 9 Va.-W. Va. Enc. Dig. 724.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.